

Notice of Allowability

Application No.

10/723,982

Examiner

Satyendra K. Singh

Applicant(s)

BINETTE ET AL.

Art Unit

1657

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 6/4/2007.
2. ☒ The allowed claim(s) is/are 1,3-7,9-14 and 16-21.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date 6/4/07
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material

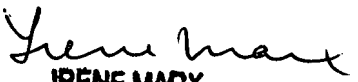
5. ☐ Notice of Informal Patent Application

6. ☒ Interview Summary (PTO-413),
Paper No./Mail Date 08/08/2007.

7. ☒ Examiner's Amendment/Comment

8. ☐ Examiner's Statement of Reasons for Allowance

9. ☐ Other _____


IRENE MARX
PRIMARY EXAMINER

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with attorney of the record Mr. Charlton Shen on August 8th, 2007.

The application has been amended as follows:

Terminal Disclaimer

The terminal disclaimer filed on July 30th 2007 disclaiming the terminal portion of any patent granted on this application, which would extend beyond the expiration date of the full statutory term of any patent granted from the co-pending US applications No. 10/374,772 and 10/374,754, has been reviewed and is accepted. The terminal disclaimer has been recorded.

Election/Restrictions

The requirement for the **species election** previously made by the examiner (group I, instant claims 3, 6, 7, 12, 14, 16, 18 and 19; see office action mailed on May 8th 2006) has been **withdrawn**, and all the claimed species **have been rejoined** and examined for their allowability on their merits.

In the Claims

Claim 15 has been canceled by this examiner's amendment.

Claims 1, 3-7, 9-14 and 16-21 have been allowed by this examiner's amendment.

Claims 4, 6, 14, 16 and 19-21 have been amended as follows:

4. The implant of claim 1, wherein the at least one tissue fragment comprises a tissue selected from the group consisting of autogenic tissue, allogeneic tissue, xenogeneic tissue, and combinations thereof.

6. The implant of claim 1, wherein the granules comprise a biocompatible material selected from the group consisting of aliphatic polyesters, copoly(ether-esters), solid copolymers of fatty acid esters of glycerol and succinic acid, polyoxaesters, collagen, polyanhydrides, and combinations thereof.

14. The implant of claim 13, wherein the curing agent is selected from the group consisting of thrombin, calcium, divinyl sulfone (DVS), polyethylene glycol divinyl sulfone (VS-PEG-VS), hydroxyethyl methacrylate divinyl sulfone (HEMA-DIS-HEMA), formaldehyde, glutaraldehyde, aldehydes, isocyanates, alkyl and aryl halides, imidoesters, N-substituted maleimides, acylating compounds, carbodiimide, hydroxychloride, N-hydroxysuccinimide, light, pH, temperature, metal ions, and combinations thereof.

16. The implant of claim 1, wherein the tissue carrier matrix further comprises at least one biological component selected from the group consisting of antibiotics, antimicrobial agents, anti-inflammatory agents, growth factors, growth factor fragments, small-molecule wound healing stimulants, hormones, cytokines, proteins, peptides, antibodies, enzymes, isolated cells, platelets, glycosaminoglycans, immunosuppressants, nucleic acids, analgesics, and combinations thereof.

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19. The implant of claim 16, wherein the at least one biological component is an isolated cell, selected from the group consisting of osteocytes, fibroblasts, stem cells, pluripotent cells, chondrocyte progenitors, chondrocytes, osteocytes, osteoclasts, osteoblasts, endothelial cells, macrophages, adipocytes, monocytes, plasma cells, mast cells, umbilical cord cells, leukocytes, stromal cells, mesenchymal stem cells, epithelial cells, myoblasts, tenocytes, ligament fibroblasts, and bone marrow cells.


20. The implant of claim 16, wherein the at least one biological component is contained within the granules.


21. The implant of claim 16, wherein the at least one biological component is contained within a coating covering the granules.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Satyendra K. Singh whose telephone number is 571-272-8790. The examiner can normally be reached on 9-5MF.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jon P. Weber can be reached on 571-272-0925. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Satyendra K. Singh
Patent Examiner
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IRENE MARX
PRIMARY EXAMINER